

STATE OF MICHIGAN
COURT OF APPEALS

GAIL LOWE,

Plaintiff-Appellant,

v

GEORGE BARBER,

Defendant-Appellee.

UNPUBLISHED

August 3, 2001

No. 219123

Macomb Circuit Court

LC No. 96-003570-NI

Before: Smolenski, P.J., and McDonald and Jansen, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of no cause of action in favor of defendant. Plaintiff raises issues pertaining to whether the jury verdict was against the great weight of the evidence, and to the trial court's order denying plaintiff's motion for judgment notwithstanding the verdict or, in the alternative, a new trial. We affirm.

Plaintiff argues that the jury verdict was against the great weight of the evidence because evidence presented at trial clearly indicates that defendant negligently failed to yield the right-of-way to plaintiff.

This Court reviews the trial court's decision on a motion for a new trial based on the great weight of the evidence for abuse of discretion. *Phinney v Perlmutter*, 222 Mich App 513, 524-525; 564 NW2d 532 (1997). An abuse of discretion is found only in extreme cases, those where the result is so palpably and grossly violative of fact and logic that it demonstrates a perversity of will, a defiance of judgment, or the exercise of passion or bias. *Alken-Ziegler v Waterbury Headers Corp*, 461 Mich 219, 227-228; 600 NW2d 638 (1999).

In deciding a motion for a new trial, the trial court's function is to decide whether the overwhelming weight of the evidence favors the losing party. *Morinelli v Provident Life & Accident Ins Co*, 242 Mich App 255, 261; 617 NW2d 777 (2000). A trial court may grant a plaintiff's motion for a new trial based on the great weight of the evidence *only* if the evidence preponderates heavily against the verdict, such that a miscarriage of justice would result if the verdict were allowed to stand. *In re Ayres*, 239 Mich App 8, 23; 608 NW2d 132 (1999). The trial judge is not empowered to sit as a "thirteenth juror" and grant a new trial on the basis of disagreement with the jurors' assessment of credibility. *Id.* at 23-24. This Court gives

substantial deference to a trial court's conclusion that a verdict was *not* against the great weight of the evidence. *Phinney, supra* at 525.

The trial evidence indicates that reasonable jurors could have disagreed on whether or not defendant's actions were the proximate cause of the accident. At trial, the two parties differed on almost every issue of importance regarding the incident, ranging from the speed and position of each automobile to the status of traffic signals at the time of the accident.

As a result, the jury was essentially confronted with an issue of witness credibility. The jury evaluated the relative credibility of the witnesses, as well as the credibility of the other evidence presented at trial, and apparently believed defendant's testimony that he acted with reasonable care when he entered the left turn lane, and that his actions were not the proximate cause of the accident.

When evaluating plaintiff's motion for a new trial, the trial court was not empowered to overrule the jury's evaluation of the relative credibility of witnesses. *In re Ayres, supra* at 23-24. Rather, the trial court was charged with the task of evaluating whether the evidence preponderated heavily against the verdict such that a miscarriage of justice would result if the verdict were allowed to stand. *Id* In this case, reasonable jurors could have disagreed as to the meaning and credibility of evidence presented by plaintiff and defendant. Therefore, the jury verdict was not contrary to the great weight of the evidence. The trial court did not abuse its discretion in denying plaintiff's motion for a new trial based on the great weight of the evidence.

Next, plaintiff argues that the trial court erred in denying plaintiff's motion for JNOV on the grounds that, at the motion hearing, the trial court failed to properly evaluate the evidence presented at trial. Again, plaintiff cites no legal authority in support of her argument. Ordinarily, an appellant may not merely assert her position and leave it to this Court to discover and rationalize the basis for her claims. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998). Nonetheless, in the interest of justice, we will analyze plaintiff's argument on this issue.

A trial court's decision on a motion for judgment notwithstanding the verdict is reviewed de novo. *Morinelli, supra* at 261. In ruling on a motion for judgment notwithstanding the verdict, the trial court should grant the motion only if there was insufficient evidence, taken in the light most favorable to the nonmoving party, to create an issue for the jury. *Pontiac School Dist v Miller, Canfield, Paddock & Stone*, 221 Mich App 602, 612; 563 NW2d 693 (1997). If reasonable jurors could have reached different conclusions based on the evidence, the jury verdict must stand. *Id*. Only if the evidence failed to establish a claim as a matter of law was JNOV appropriate. *Id*.

Defendant presented sufficient evidence to create a genuine issue of fact for the jury at trial, and reasonable jurors could have reached different conclusions based upon the evidence. Therefore, the trial court did not err in denying plaintiff's motion for JNOV.

Affirmed.

/s/ Michael R. Smolenski

/s/ Gary R. McDonald